

## CONFIRMATION OF A PRIVATE LAND CLAIM.

APRIL 6, 1860.—Ordered to be printed.

Mr. BLAIR, from the Committee on Private Land Claims, made the following

### REPORT.

*The Committee on Private Land Claims, to whom was referred the memorial of the City of New Orleans, praying for the confirmation of title to two hundred and twenty-seven thousand eight hundred and fifty-three acres of land in the State of Louisiana, having had the same under consideration, submit the following report:*

The memorial sets forth that ninety thousand acres of the land in question was granted by Morales, governor general of Louisiana and West Florida, to Don Louis de Clouet and Don Alexander de Clouet, in the months of October and November, 1803; that one hundred and twenty thousand acres were, in the month of October of the same year, granted by the same officer to Don Jeronimo La Chiapella; that forty thousand acres were granted, on the 13th October, 1803, to Don Juan Delassosa; that, on the 5th of March, 1806, Don Thomas Estevan granted 2,700 acres to John McDonogh, and the remaining 2,100 acres were acknowledged by the Spanish officer last named to be vested in Philip Robinson on the 20th January, 1804, by virtue of a settlement made in 1797.

These grants were all made by the Spanish authorities after the retrocession of the province of Louisiana by Spain to France, and even after the treaty of Paris, April 30, 1803, by which the United States acquired the title; and it is admitted that if the lands embraced in the grants do lie within the territory acquired by the United States from France under that treaty, no title passed to the grantees; and, consequently, the devisees of John McDonogh would have no claim for the confirmation of title prayed for in the memorial. The lands are situated in that part of the State of Louisiana embraced between the rivers Mississippi and Perdido, and it is alleged by the memorialist that this portion of Louisiana was not acquired by the United States from France by the treaty of 1803, but was part of the Territory of West Florida, which was acquired from Spain by the treaty of 1819.

To what power, then, did the territory between the Mississippi and Perdido belong at the date of these grants?

At the commencement of the war of 1756, France had undisputed possession of the province of Louisiana on both sides of the Mississippi, and Spain at the same time owned Florida, the common boundary being the Perdido river. By the treaty of February 10, 1763, between Great Britain, France, and Spain, France ceded to Great Britain the river and port of Mobile and all her possessions east of the Mississippi, except the Island of New Orleans; Spain, on her part, ceded Florida to Great Britain, and France, by a separate treaty, kept secret, on the same day, (as generally understood,) ceded the residue of Louisiana to Spain.

France, then holding Louisiana as far east as the Perdido, ceded a part to Spain, to wit: the Island of New Orleans and the part west of the Mississippi, and the remainder east of the Mississippi and Iberville to Great Britain; and Great Britain acquiring Florida from Spain and uniting it with that part of Louisiana east of the Mississippi and Iberville, divided the whole acquisition into East and West Florida. Spain subsequently conquered the Floridas from Great Britain, and her conquest was confirmed to her by the treaty of Versailles of 3d September, 1783, by which Great Britain ceded to her East and West Florida, under which names the country continued to be governed by the crown of Spain. The King of Spain, (thus owning the Floridas and Louisiana both,) on the 1st October, 1800, by the treaty of St. Ildefonso, ceded to France the province of Louisiana, with the following description: "His Catholic Majesty promises and engages on his part to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations relative to his royal highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it *now has in the hands of Spain*, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other states."

On the 30th April, 1803, by treaty between France and the United States, the First Consul of the French republic, reciting the treaty of St. Ildefonso, ceded to the United States "the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above-mentioned treaty with his Catholic Majesty." The United States subsequently received from France a surrender of Louisiana in the same indefinite language; and immediately there arose a controversy between the government of the United States and Spain on the construction of the treaty of St. Ildefonso, which lasted for sixteen years.—Spain asserting the Mississippi and Iberville as the eastern boundary of Louisiana, and the United States maintaining that the province extended as far east as the Perdido.

If the treaty had designated the province by metes and bounds, there could have been no difficulty in its construction. Or if it had designated it simply as "Louisiana, as it now is in the hands of Spain," there could have been no difference of construction; for at the date of the treaty the territory west of the Mississippi was known as Louisiana, whilst that immediately east was held as West Florida.

But it was further described as the Louisiana such as it was held by France when she possessed it, and that was held by the United States to carry it to the Perdido. This construction of the treaty was proclaimed by the government of the United States not only in all her diplomatic correspondence with the Spanish government, but by positive acts of sovereignty, among which may be mentioned the act of 1812, extending the limits of the State of Louisiana over a part of the disputed territory, including the lands embraced in the petition of the memorialist, and the admission of Alabama in 1819, before the ratification of the treaty of that year with Spain for the acquisition of Florida. This famous controversy was finally closed by the treaty of 1819, ratified February 22, 1821, between Spain and the United States, whereby the King of Spain ceded all the territory which belonged to him to the eastward of the Mississippi, known by the name of East and West Florida. Whilst Spain claimed, as we have seen during the controversy, that West Florida extended to the Mississippi, such phraseology was used in the treaty as to exclude the inference that the United States in any way recognized the validity of the claim; the cession covering only the territory *that belonged* to the King of Spain. The memorialist now asks us at this day to reopen this whole question, and reverse the uniform action of the government, to repudiate all our claims as pretensions, and all our public acts of sovereignty over the territory in question as usurpations.

The committee are not insensible to the force of the arguments presented by the memorialist to establish the correctness of the Spanish construction of the treaty of St. Ildefonso. It is as strong, and perhaps stronger, than that of the Spanish government in support of the same position; but they deem it inexpedient at this day to reconsider a question which they regard as settled by the action of the government, so far as any political question can be settled. Inasmuch, then, as the committee are of opinion that the grants in question are within the territory of Louisiana, as acquired from France by the treaty of April 30, 1803, they are adverse to their confirmation. They were made by Spain after she ceded her title to France, and after France ceded to the United States, when she had no title to, or rightful dominion over, the territory; and are within the provisions of the 14th section of the act of March 26, 1804, which enacts "that all grants for lands within the territories ceded by the French republic to the United States by the treaty of April 30, 1803, the title whereof was at the date of the treaty of St. Ildefonso in the crown government or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity."

